Supreme Court, U.S.
FILED
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No.

In The

Supreme Court of the United States

October Term, 1998

GUEHENNO LABORDE,

Petitioner,

vs.

U.S. IMMIGRATION AND NATURALIZATION SERVICE;
UNITED STATES OF AMERICA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether circumstantial evidence is sufficient for an individual to establish persecution "on account of a political opinion" when the individual has requested political asylum on the grounds of forced recruitment.

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Petitioner Guehenno Laborde respectfully petitions for a writ of certiorari to review the panel decision of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The panel opinion of the United States Court of Appeals for the Fourth Circuit (App. A) is unreported. The opinion of the Board of Immigration Appeals (App. B) is unreported. The opinion of the Immigration Judge (App. C) is unreported. The United States Court of Appeals' denial of Mr. Laborde's petition for rehearing and suggestion for rehearing in banc (App. D) is unreported.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on May 6, 1998. The Court of Appeals denied Mr. Laborde's petition for rehearing and suggestion for rehearing in banc on July 6, 1998. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 101(a)(42)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42)(A), provides:

> The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of

persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

STATEMENT OF THE CASE

A. Factual Background

On December 29, 1993, Guehenno Laborde escaped from Haiti to avoid political persecution from the Front for the Advancement and Progress of Haiti ("FRAPH"). FRAPH emerged in September 1993 as a Duvalierist political/paramilitary organization that sought to amass civilian support to oppose the return of democratically elected President Jean Bertrand Aristide to Haiti in October 1993. App. 3a.

Mr. Laborde was in hiding in Haiti from October through December 1993, after he took a stand against FRAPH by refusing the organization's attempts to recruit him. Mr. Laborde refused to join FRAPH because he was an Aristide supporter and opposed FRAPH's politics. App. 4a (*see* Administrative Record below (A.R.) 243). In Mr. Laborde's opinion, the mission of FRAPH was "to destroy and break everything in Haiti", in accordance with its "ideology to wash out the face of the country." App. 4a.

FRAPH perceived anyone refusing to join them as a political opponent. As testified by Mr. Laborde, "[w]hen they ask you to join their group and you refuse to do so, they [the FRAPH] think of you as a supporter of the legal regime [Aristide]." App. 4a (*see* A.R. 209:5-7).

Mr. William O'Neill, the former Legal Director of the United Nations/Organization of American States International Civilian Mission to Haiti from June 1993 to March 1994, has given an affidavit stating that Mr. Laborde's refusal to join FRAPH:

> is tantamount to expressing a clear political opinion against FRAPH, the Haitian military and all these institutions stand for and brands Mr. Laborde as a supporter of President Jean-Bertrand Aristide.

App. 20a, 25a. Mr. O'Neill's affidavit further explained.

> The climate in Haiti was intense and volatile throughout 1993 and the first nine months of 1994 and it was impossible to be neutral. One was either with the military/FRAPH alliance or seen as an enemy.

App. 25a. In this climate, in October 1993, the FRAPH targeted Mr. Laborde for recruitment as a presumed Aristide supporter because he was an educated young man who lived and worked in Port-au-Prince neighborhoods known to be Aristide strongholds. A contemporaneous United States Department of Justice report confirmed that the military government in power at that time considered students to be pro-Aristide. App. 13a. Furthermore, Mr. Laborde had high visibility because he was popular and worked in the neighborhood store. App. 4a.

The FRAPH first attempted to recruit Mr. Laborde by letter. When Mr. Laborde failed to respond to the letter, two FRAPH members approached Mr. Laborde while he was alone in the store and demanded a response. Mr. Laborde refused recruitment by the FRAPH. App. 4a, 5a.

Thereafter, the FRAPH targeted Mr. Laborde for persecution and/or elimination as a political enemy because he refused recruitment. Within a week, two men, who refused to identify themselves, visited Mr. Laborde's home at 10 o'clock at night looking for him. Mr. Laborde was not home, and at his aunt's insistence, he stayed elsewhere the following night because such visits portended kidnapping and murder in Haiti at that time. The same two men returned to Mr. Laborde's home at approximately 11 o'clock the very next night, again looking for Mr. Laborde. After interrogating the household as to Mr. Laborde's

whereabouts, the two men warned that wherever Mr. Laborde was, they would find him. Mr. Laborde immediately went into hiding after hearing of this second night visit, and stayed in hiding for the next three months until he escaped from Haiti. It was common knowledge that the people who were sought after by the FRAPH were murdered. App. 5a, 18a, 19a, 25a.

Unable to find Mr. Laborde, the intended victim, the FRAPH targeted his family. Although Mr. Laborde's parents and siblings lived three hours travel from Port-au-Prince in the country town of l'Asile, they too were paid a late night visit by individuals demanding to know the whereabouts of Mr. Laborde. These individuals terrorized the family, beating Mr. Laborde's father and 19 year old sister, and ransacking the home. App. 5a, 19a, 25a. The experience of Mr. Laborde's family was consistent with FRAPH activities identified in a U.S. Department of Justice report. App 13a (*see* A.R. 314-15).

In October 1994, the United States and multi-national forces deployed troops to Haiti to ensure its political stability. App. 6a, 27a. Despite the return of President Aristide, and the subsequent election of President Rene Preval, Mr. Laborde continues to fear persecution if he were returned to Haiti. There is documented evidence of FRAPH's intimidation, persecution, murder and mutilation of the corpses of "Returned Haitians" even after the presence of the multinational force ("MNF") and return of President Aristide. The FRAPH and its successor organizations continue to be a threat for a number of reasons, including: (1) the failure of the MNF to disarm the FRAPH and other paramilitary groups; (2) the ineffectiveness of the interim Haitian policy force because of its infiltration by former FRAPH and Haitian Armed Forces members; (3) a lack of effective MNF policing against FRAPH; and (4) a minimal MNF presence in rural areas — such as L'Asile. App. 9a, 28a.

B. Legal Proceedings

Upon Mr. Laborde's arrival at Miami International Airport, the INS charged him with excludability pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(1) of the Immigration and Nationality Act ("INA"). Mr. Laborde appeared for preliminary hearings before an Immigration Judge ("IJ") in Miami. App. 3a. He filed an asylum application on May 10, 1994, before he obtained pro bono counsel through the Lawyers' Committee for Human Rights. Mr. Laborde moved to Silver Spring, Maryland on May 24, 1994 to live with cousins who were in a position to assist him, and his case was transferred to the U.S. Immigration Court in Arlington, Virginia. App. 3a, 17a.

Mr. Laborde first appeared before IJ Joan Churchill in Arlington, Virginia for a master calendar hearing on December 14, 1994. At a hearing on April 14, 1995, Mr. Laborde testified regarding his application for asylum. The INS' case was limited to cross examination by INS District Counsel Debra Todd. On May 8, 1995, the IJ rendered an oral decision denying Mr. Laborde's application. App. 3a, 30a-40a.

Mr. Laborde appealed this denial to the Board of Immigration Appeals ("BIA"). On November 18, 1996, the BIA denied the appeal based on the conclusion that the evidence did not disprove the inference that the FRAPH may have targeted and sought to punish Mr. Laborde merely because it sought to increase its membership or intimidate others into joining. App 24a. The BIA said there was insufficient evidence on the record to conclude that FRAPH's actions subsequent to Mr. Laborde's refusal to join were motivated by a perception that he was a political opponent rather than simply an unwilling recruit. App 25a. The BIA further failed to cite any support, despite a direct contradiction with a U.S. Department of Justice report, for its conclusion that there was no evidence that the

"FRAPH's actions toward the applicant's family were motivated by anything other than a desire to coerce him into joining their organization." App. 25a, 26a; *compare* A.R. 314-15.

There were numerous arguments and record evidence raised on appeal that the BIA did not address, including the applicant's arguments that he suffered past persecution, and fears future persecution as a member of a social group, defined as a subset of draft age young men. The BIA did not address the record evidence concerning the beatings, murder, and mutilation of repatriated Haitians (*see* A.R. 684, 264-66), instead speculating that "there would be little if any continuing interest in him by the FRAPH partisans" if he were repatriated to Haiti. App. 22a, 23a, 28a.

Mr. Laborde filed a petition for review with the U.S. Court of Appeals for the Fourth Circuit. The Fourth Circuit denied his petition by a decision dated May 6, 1998, on the grounds that the evidence Mr. Laborde submitted of his persecutor's motives was "too general". App. 14a. The Fourth Circuit ruled:

> in the absence of evidence that FRAPH sought to swell its ranks solely with pro-Aristide recruits, the Board drew a permissible inference that FRAPH conducted recruitment efforts without regard to the actual political opinions of a potential individual recruit.

Id. The Fourth Circuit further concluded that for the same reason, the evidence does not compel a finding that FRAPH's subsequent actions against Laborde were on account of his political opinion rather than his unwillingness to join FRAPH. *Id.*

Mr. Laborde filed a petition for rehearing and suggestion for rehearing in banc, which was denied on July 6, 1998. App. 41a, 42a.

REASONS FOR GRANTING THE WRIT

This case presents an important and timely question regarding the type and amount of evidence required for an individual to establish persecution "on account of a political opinion" when the individual has refused forced recruitment. In the wake of the U.S. Supreme Court's decision in *I.N.S. v. Elias-Zacarias*, 502 U.S. 478 (1992) ("*Elias-Zacarias*"), the Ninth and Third Circuits embraced the Supreme Court's ruling that "direct *or* circumstantial evidence" is sufficient to establish persecution "on account of a political opinion". 502 U.S. at 483 (emphasis added). In contrast, the Fourth Circuit's decision in this case sets forth a new and more burdensome evidentiary standard requiring direct evidence that the persecutor targeted only individuals with an inapposite political opinion for forced recruitment. This standard conflicts not only with established Supreme Court precedent and the Ninth and Third Circuits, but also with the evidentiary standard contemplated by international norms and Congress.

I.

THE CIRCUITS ARE IN CONFLICT AS THE TYPE AND AMOUNT OF EVIDENCE REQUIRED TO ESTABLISH PERSECUTION "ON ACCOUNT OF A POLITICAL OPINION" IN FORCED RECRUITMENT CASES.

The decision below sets forth a new and more burdensome evidentiary standard and conflicts with the U.S. Supreme Court's decision in *Elias-Zacarias*, the Ninth Circuit's decision in *Sangha v. I.N.S.*, 103 F.3d 1482 (9th Cir. 1997) ("*Sangha*"), and the Third Circuit's decision in *Balasubramanrim v. I.N.S.*, 143 F.3d 157 (3d Cir. 1998) ("*Balasubramanrim*").

In *Elias-Zacarias*, this Court addressed, as a question of law, whether the respondent's well-founded fear is a fear of persecution "on account of . . . political opinion" within the meaning of § 101(a)(42) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42), when the respondent fled the country after refusing forced recruitment by guerrillas. The court determined that a mere refusal to submit to forced recruitment was insufficient to establish a political opinion, because the refusal could be based on such non-political grounds as fear of combat, preference for civilian life and a desire to remain with one's family. 502 U.S. 482-83.

In reaching this decision, however, the Supreme Court said that it "need not decide whether the evidence compels the conclusion that Elias-Zacarias held a political opinion", because Elias Zacarias was unable to establish that he had a well-founded fear that guerrillas would persecute because of that political opinion rather than because of his mere refusal to fight with the guerrillas. *Id.* at 483. In response to Elias Zacarias' objections that he could not be expected to provide direct proof of his persecutor's motives, the majority opinion stated:

> We do not require that. But since the statute makes motive critical, he must provide *some* evidence of it, direct or circumstantial.

Id. (emphasis in original). Thus, the Court acknowledged that an applicant for political asylum could, by circumstantial evidence, demonstrate that his persecutors imputed a political opinion to him, and that his political opinion was the impetus for the past or potential future persecution.

In *Sangha*, the Ninth Circuit analyzed the varieties of "political opinion" sufficient to constitute direct or circumstantial evidence of a well-founded fear of persecution

on account of a political opinion in a case involving forced recruitment. Pursuant to *Sangha*, an individual must establish four facts: (1) that he has been a victim of persecution;[1] (2) that he or she holds a political opinion; (3) that this political opinion is known or imputed by the persecutors; and (4) the ensuing persecution of the victim has been or will be on account of this opinion. *Sangha*, 103 F.3d at 1487.

With respect to the second required fact, the Ninth Circuit noted:

> [u]nder our case law, and unchanged by Elias Zacarias, an applicant can establish his political opinion on the basis of his own affirmative political views, his political neutrality [in an environment where neutrality is fraught with hazard], or a political opinion imputed to him by his persecutors.

Sangha, 103 F.3d at 1488-1490. An individual may establish his political opinion by establishing his "hazardous political neutrality" by deliberate actions, including refusing in the face of threats to join guerilla forces. *Id.* at 1488 (citing *Bolanos-Hernandez v. I.N.S.*, 767 F.2d 1277, 1286 (9th Cir. 1984) (political neutrality must be the product of applicant's conscious, deliberate choice) and *Ramos-Vasquez v. I.N.S.*, 57 F.3d 857, 863 (9th Cir. 1995) (applicant must show that opinion was articulated sufficiently for it to be the basis of persecution)). An applicant may establish an imputed political opinion where

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1. The Fourth Circuit did not reach this fact in its opinion, however, Mr. Laborde has established persecution as defined in *Sangha*: "the infliction of suffering or harm upon those who differ . . . in a way regarded as offensive." *Sangha*, 103 F.3d at 1487. The FRAPH threatened Mr. Laborde after he refused recruitment and forced him to go into hiding. In an effort to locate Mr. Laborde, the FRAPH terrorized his family, beating his father and sister. App. 5a, 19a, 25a.

an applicant has refused to join a non-governmental guerrilla group. *Id.* (citing *Alonzo v. I.N.S.*, 915 F.2d 546, 549 (9th Cir. 1990) and *Arteaga v. I.N.S.*, 836 F.2d 1227, 1231 (9th Cir. 1988)).

With respect to establishing the fourth required fact — the "on account of" causation element, the Ninth Circuit followed the Supreme Court's instruction that a refusal to fight is not enough to establish that the persecutor acted "on account of" the refugee's political views, but noted that the Supreme Court left open what type of "direct or circumstantial evidence might suffice to show motivation." *Sangha*, 103 F.3d at 1490. The Ninth Circuit iterated at least four different circumstances which should suffice, including "when there is no other logical reason for the persecution." *Id.* (citing *Nasseri v. Moschorak*, 34 F.3d 723, 729 (9th Cir. 1994) and *Rodriguez-Roman v. I.N.S.*, 98 F.3d 416, 429-30 (9th Cir. 1996)).

The Third Circuit has adopted the Ninth Circuit's opinion in *Sangha*, finding that persecution may be on account of a political opinion that the applicant actually holds or on account of one the foreign government has imputed to him. *Balasubramanrim v. I.N.S.*, 143 F.3d at 165, n. 10 (court remanded to BIA because there was not sufficient evidence on the record to support the adverse credibility determinations upon which the IJ and BIA denied the petition).

The Fourth Circuit's denial of petitioner Mr. Laborde's petition for review is in conflict with the Supreme Court's decision in, and the Ninth and Third Circuit's interpretation of *Elias-Zacarias*.[2]

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2. Additionally, the Fourth Circuit's disregard of *Sangha* in its decision in this case is in conflict with the Fourth Circuit's own opinion in *Cruz-Aguilar v. I.N.S.*, 1998 U.S. App. LEXIS 1891 (4th Cir. January

(Cont'd)

In applying *Elias-Zacarias* to the present case, the Fourth Circuit found that the evidence Mr. Laborde submitted of his persecutor's motives was "too general". It ruled:

> in the absence of evidence that FRAPH sought to swell its ranks solely with pro-Aristide recruits, the Board drew a permissible inference that FRAPH conducted recruitment efforts without regard to the actual political opinions of a potential individual recruit.

App. B at 11. In doing so, the Fourth Circuit sets forth a new and more burdensome evidentiary standard that is inconsistent with the "direct *or* circumstantial" standard recognized by the U.S. Supreme Court in *Elias-Zacarias* and embraced in *Sangha*. The Fourth Circuit requires Mr. Laborde to submit specific evidence of his persecutors' motives in order to avoid any contrary (and unreasonable) inferences to be drawn from circumstantial evidence.

Contrary to the Fourth Circuit, however, and consistent with the Ninth and Third Circuit interpretations' of *Elias-Zacarias*, Mr. Laborde established that he held an affirmative political opinion: "the FRAPH is a subversive group that is ruining my country. I did not want to join a group like that." App. 4a, 5a (*see* A.R. 242-243). Mr. Laborde also established that the FRAPH would have imputed this opinion to him because he was educated young male who lived and worked in Pro-Aristide neighborhoods. App. 9a.

(Cont'd)

27, 1998), and *Misolo v. I.N.S.*, 1998 U.S. App. LEXIS 21521 (4th Cir. September 2, 1998); which relied upon *Sangha* as the legal standard with respect to whether a person was persecuted on account of a political opinion. It is inappropriate for the Fourth Circuit to adopt a sister circuit's precedent in deciding certain Fourth Circuit cases and to reject that precedent in another case. *See John Hancock Ins. Co. v. Bartels*, 308 U.S. 180, 181 (1939) (certiorari granted because of intra circuit conflict and the importance of the question).

Mr. William O'Neill, the legal director of the United Nations/ Organization of American States International Civilian Mission to Haiti from June 1993 to March 1994, affirmed that

> in neighborhoods known for their loyalty to [Aristide] like Carrefour-Feuilles and its environs where Mr. Laborde lived and the Quartier Bolosse where he worked . . . were especially targeted by the military and FRAPH; men of Mr. Laborde's age group were particularly at risk since they were viewed as prime Aristide supporters.

App. 13a.

Under such circumstances, Mr. Laborde's overt refusal to join FRAPH confirmed for the FRAPH that Mr. Laborde possessed an anti-FRAPH political opinion, and caused the FRAPH further to target him for persecution. *Sangha*, 103 F.3d at 1488. This is confirmed by the fact that FRAPH pursued Mr. Laborde after he refused to join, paying two late night visits to his home, and also to his family's home three hours away. App. 5a, 18a, 19a, 25a. As testified by Mr. O'Neill, the FRAPH perceived individuals as being either with the FRAPH or against them, there was no neutral position. App. 25a. Moreover, numerous journalistic and international organization reports consistently describe the FRAPH's *modus operandi* with respect to its perceived political opponents. *See* App. 20a.

Based on such acknowledged facts, a reasonable fact finder could not fail to find there is sufficient circumstantial evidence to establish that the FRAPH imputed a pro-Aristide political opinion to Mr. Laborde, and sought to persecute him on account of his opinion. These facts, and others on the record, permit no other logical conclusion.

This Court should grant Mr. Laborde's petition for certiorari in order to redress the Fourth Circuit's improper institution of a new and more burdensome evidentiary standard, and thereby resolve the conflicts between the circuits. *See Army & Air Force Exchange Service v. Sheehan*, 456 U.S. 728, 733 (1982) (certiorari granted because ruling below in conflict with Supreme Court precedents); *Chicago Teachers Union, Local No. 1, AFT, AFL-CIO et al. v. Hudson, et al.*, 475 U.S. 292, 300-01 (1986) ("the importance of the case, and the divergent approaches of other courts to the issue, led us to grant certiorari").

II.

THE FOURTH CIRCUIT'S HIGHER EVIDENTIARY STANDARD CONFLICTS WITH THE EVIDENCE REQUIRED BY THE U.S. SUPREME COURT IN *ELIAS-ZACARIAS* AND OTHER COURT OF APPEALS' PRECEDENT.

The Fourth Circuit's opinion requires Mr. Laborde to have presented specific and direct evidence of the FRAPH's motivation in conducting any and all of its forced recruitment. Mr. Laborde had already presented both his and Mr. O'Neill's testimony that the FRAPH, in fact, engaged in a campaign of terror by conducting forced recruitment of young men of Mr. Laborde's age in pro-Aristide neighborhoods. Mr. Laborde also testified that after he refused recruitment, the FRAPH targeted him for late night visits. The actual conduct of the FRAPH, in view of such cumulative evidence of Mr. Laborde's pro-Aristide political opinion, should constitute sufficient circumstantial evidence as to FRAPH's motives.

In contrast, demonstrating that the FRAPH "sought to swell its ranks *solely* with pro-Aristide recruits" requires specific

proof of FRAPH's motives. This Court should reject the Fourth Circuit's institution of a higher evidentiary standard which essentially would require Mr. Laborde to call as witnesses those FRAPH members who sought his membership in Haiti. This has never been the standard for asylum seekers, and it directly conflicts with this Court's holding in *Elias Zacarias*.

Consistent with the "direct or circumstantial" evidentiary standard set forth by the U.S. Supreme Court in *Elias-Zacarias*, numerous circuit cases have indicated that the applicant's own testimony, by itself or supported by general documentary evidence, is sufficient to prove past persecution or a likelihood of future persecution. *See e.g.*, *Maldonado-Cruz v. INS*, 883 F.2d 788 (9th Cir. 1989); *Artiga-Turcios v. INS*, 829 F.2d 720 (9th Cir. 1987); *Canjura-Flores v. INS*, 784 F.2d 885 (9th Cir. 1985); *Bolanos-Hernandez*, 767 F.2d at 1285 ("persecutors are hardly likely to provide their victims with affidavits attesting to their acts of persecution").

In *McMullen v. INS*, 658 F.2d 1312 (9th Cir. 1981), the Ninth Circuit specifically rejected a direct evidence standard, overturning the Board's finding that the newspaper articles and family letters submitted by McMullen did not suffice to support his claim of fear of persecution. The Court noted that "[m]embers of the underground [Provisional Irish Republican Army ("PIRA")] obviously would not testify or otherwise make public their intentions," and that "[t]he PIRA's terrorist practices are also likely to discourage testimony from knowledgeable and sympathetic third parties." *McMullen*, 658 F.2d at 1319 (citing the United Nations High Commissioner for Refugees, Handbook on Procedure and Criteria for Determining Refugee Status, ¶ 196, p. 47 (1979) ("the UNHCR Handbook") which notes "that refugees fleeing political persecution are often limited in the evidence they can submit to support their claims").

As stated by Justice Breyer in a First Circuit opinion:

> To offer refuge to those faced with genuine threats of persecution but to forbid them to offer journalistic accounts, expert opinions, and third-party reports in their efforts to prove it would simply "sound the word of promise to the ear but break it to the hope."

Amaneh-Firempong v. INS, 766 F.2d 621, 628 (1st Cir. 1985) (J. Breyer).

To be consistent with Justice Breyer's reasoning, in reviewing Mr. Laborde's case, the Fourth Circuit should have given due weight to the journalistic accounts, third party reports — including reports from the U.S. State Department, and the affidavit testimony of Mr. O'Neill, the U.N.'s Haitian Mission Legal Director. Instead, the Fourth Circuit disregarded this material, and requires Mr. Laborde to disprove all possible adverse inferences to be drawn from the submitted circumstantial evidence. The Fourth Circuit's adoption of a higher evidentiary standard is contrary to all established precedent, and Mr. Laborde's petition for certiorari should be granted in order to remedy this conflict.

III.

THE FOURTH CIRCUIT'S EVIDENTIARY STANDARD CONFLICTS WITH THAT CONTEMPLATED BY INTERNATIONAL NORMS AND CONGRESS.

The international definition of refugee was articulated in the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol, and acceded to by the United States in 1968.[3]

3. Convention relating to the Status of Refugees, opened for signature July 28, 1951, 189 U.N.T.S. 150. The terms of the 1951 Convention were subsequently incorporated into the Protocol relating to the Status of Refugees, opened for signature Jan 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

Congressional enactment of the 1980 Refugee Act sought to conform U.S. refugee law to international refugee law.[4] Congress was aware of the UNHCR Handbook when it enacted the 1980 Refugee Act and in all likelihood intended the standards within it to serve as an interpretative guide to the 1980 Refugee Act. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 436-39 (1987) (Supreme Court identified UNHCR Handbook as a significant source of interpretative guidance).

The Fourth Circuit's adoption of a specific and direct evidence standard for a refugee to demonstrate persecution "on account of political opinion" is inconsistent with these international norms, and, thus, congressional intent. There is no requirement in the law or in international norms that all inferences must be drawn against the applicant. Indeed, the UNHCR Handbook provides that the benefit of the doubt should be given to an applicant, such as Mr. Laborde, who is determined to be credible. UNHCR Handbook, ¶ 203.

In contrast, the Fourth Circuit's opinion establishes a legal evidentiary standard which requires an applicant to either: (i) have specific proof of his persecutors' motives, or (ii) to be able to confirm his persecutors' motives because the applicant actively confronted his persecutor in order to personally deliver the applicant's political sentiment. The INA does not require a refugee to undertake such hazard in order to be eligible for asylum. Indeed, the plain language merely requires a refugee to have a "well-founded fear of persecution on account of . . . a political opinion." 8 U.S.C. §1101(a)(42)(A).

The UNHCR Handbook addresses the issue of difficulty of proof for an asylum applicant:

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4. *See* S. Rep. No. 256, 96 Cong. 2d Sess. 4 (1979), *reprinted* in 1980 U.S.C.C.A.N. 141, 144.

> It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents.

UNHCR Handbook, ¶ 196.

Finally, in cases of forced recruitment which involve military groups condemned by the international community, there is clearly a different modicum of evidence required for asylum. The UNHCR Handbook has provided, and the BIA has acknowledged, that a draft age refugee should be considered eligible for asylum when he has been persecuted for refusing to serve in a military whose acts are condemned by the international community as contrary to the basic rules of human conduct. *See M.A. v. I.N.S.*, 899 F.2d 304, 312 (4th Cir. 1990) (citing the UNHCR Handbook ¶¶ 169, 171).

In the present case, the United Nations condemned the activities of the false Haitian Government which FRAPH supported, and deployed multi-national forces to restore Haiti's democracy. The Fourth Circuit's requirement of direct evidence conflicts with *Elias-Zacarias* and the international norms as expressed by the UNHCR. Mr. Laborde's petition for certiorari should be granted in order to address this conflict.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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